COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WATER QUALITY CONTROL COMMISSION

DRINKING WATER REVOLVING FUND RULES

REGULATION NO. 52

5 CCR 1002-52

BOARD OF HEALTH

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WATER QUALITY CONTROL COMMISSION

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DRINKING WATER REVOLVING FUND RULES

52.1 AUTHORITY

In Senate Bill 95-083, the Colorado General Assembly created the Drinking Water Revolving Fund to provide financial assistance to certain drinking water projects in the State of Colorado. The fund is held and administered by the Colorado Water Resources and Power Development Authority (the Authority), which is authorized to issue bonds to finance the program. Moneys in the fund may be used to provide financial assistance to projects included on a Project Eligibility List, which is part of the annual Intended Use Plan (IUP). Codified at sections 37-95-103 and 37-95-107.8, C.R.S., the statutes direct the Water Quality Control Commission (Commission) to submit additions and modifications to the Project Eligibility List annually for adoption by the General Assembly by Joint Resolution signed by the Governor. This regulation complies with 40 CFR part 35, subpart I, and provides for the Commission's approval of the Intended Use Plan including additions and modifications to the Project Eligibility List and the Priority / Fundable List.

The 1996 amendments to the federal Safe Drinking Water Act (SDWA) include authorization of a state revolving fund program similar to that included in the Clean Water Act for wastewater projects. The Drinking Water Revolving Fund established by Senate Bill 95-083 meets the requirements of the SDWA concerning revolving fund financing programs and allows for federal funding of Colorado's revolving fund financing program.

Section 25 1.5-203, C.R.S., also provides authority for this regulation.

52.2 **DEFINITIONS**

Section 1.5 of the Colorado Primary Drinking Water Regulations 5 CCR 1003-1, contains additional definitions that apply to this rule.

- (1) "Beneficial Use" The use of water treatment plant sludge in conjunction with wastewater treatment plant sludge to act as a soil conditioner or low grade fertilizer for the promotion of vegetative growth on land and that meet the requirements of the state Biosolids Regulations.
- "Consolidation" A proposed new construction or expansion of a drinking water supply system that will eliminate one or more existing water supply or treatment works. A letter of intent or a resolution adopted by the project participants must be provided to the Water Quality Control Division (Division) to guarantee the facilities will consolidate.
- (3) "Emergencies" Situations or occurrences of a serious nature, developing suddenly and unexpectedly that cause a treatment facilities to be in noncompliance with drinking water standards and require immediate action.
- (4) "Governmental Agencies" Departments, divisions, or other units of state government, special districts, water conservation districts, metropolitan water districts, conservancy districts, irrigation districts, municipal corporations, counties, cities and other political subdivisions, the United States

- or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.
- (5) "Health Hazard" A situation where the Division has identified a maximum contaminant level (MCL) violation or a treatment technique violation. Funding for these projects must result in compliance with existing standards.
 - (a) An <u>acute health hazard</u> includes violations of Surface Water Treatment Rule (SWTR) treatment technique requirement, bacteriological standards, and nitrite/nitrate levels. Acute contaminant health effects can occur immediately or within a short period of time.
 - (b) A <u>chronic health hazard</u> includes violations of all MCLs (other than those listed as acute) and treatment technique requirements. Chronic contaminant health effects occur after years of exposure.
 - (c) A <u>potential health hazard</u> is a situation where a public water system has periodically exceeded an MCL, has levels greater than 50 percent of an MCL on a regular basis, or has short term problems meeting a treatment technique requirement.
- (6) "Other Future Needs" Those needs in situations where a facility is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair in order to maintain compliance or further the public health protection goals of the SDWA.
- (7) "Operational Means" Temporary managerial or technical steps to protect public health during the time period when the public water system is out of compliance, e.g., boil order or bottled water.
- (8) "Pollution" The man made, man induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.
- (9) "Project Eligibility List" The list of projects eligible for financial assistance from the Authority through the Drinking Water Revolving Fund (DWRF), as adopted and from time to time modified in accordance with Section 37 95 107.8(4), C.R.S. The list shall consist of projects that address public health and SDWA compliance issues in the State of Colorado, and shall include only those domestic drinking water supply projects eligible for financial assistance through a state revolving fund pursuant to the terms of the SDWA.
- (10) "Public Water System" (PWS) A system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes:
 - (a) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and
 - (b) Any collection or pretreatment storage facilities not under such control, which are used primarily in connection with such system.
- (11) "Source Water Protection" Structural or nonstructural source water protection activities done in addition to area delineation and contaminant assessment.
- (12) "Treatment Facilities" Any devices or systems used in the collection, storage, treatment, transmission, diversion, or distribution of water intended for drinking water purposes.
- (13) "Water Conservation" Any structural or nonstructural water conservation measure that achieves a reduction in water consumption for a PWS or a publicly owned treatment works. Structural measures shall include installation of interior low-flow plumbing fixtures that are distributed and/or

installed by a governmental agency or that are funded in whole or in part by the governmental agency and water meters that are funded and owned by the governmental agency. Nonstructural measures shall include but are not necessarily limited to: incentives for previously installed low-flow fixtures, leak detection or infiltration/inflow programs, public awareness, public education, and incentive water service charges.

(14) "Water Treatment Plant Sludge" - The accumulated solids resulting from treatment of water for domestic use.

52.3 PURPOSE

- (1) The purpose of the DWRF is to provide financial assistance to governmental agencies for the construction of treatment facilities for health and compliance purposes as defined above.
- An annual Intended Use Plan (IUP) is required by the SDWA to provide information about how the state will assist communities with their drinking water needs. Included in the IUP is the Project Eligibility List, which is a comprehensive list identifying governmental agencies with drinking water project needs, and the Priority / Fundable List, identifying prioritized PWS projects that are eligible for financial assistance from the DWRF. The project priority system is intended to establish priorities for the DWRF to protect and improve the health, safety, and reliability of drinking water supplies in Colorado. It is the policy of the Commission to maintain and improve the existing high quality standards for drinking water in the State by providing accessibility to the DWRF.
- (3) It is also the policy of the Commission to encourage consolidation of drinking water systems and to promote water conservation where practicable.
- (4) It is the policy of the Commission to promote beneficial use of sludge created by treatment processes of a PWS.
- (5) Any applicant for financial assistance from the DWRF must comply with policies and procedures and other requirements of the Authority.

52.4 INTENDED USE PLAN PROCEDURES

The Division, in cooperation with the Division of Local Government (DLG) and the Authority, shall develop an annual IUP. The Division shall recommend the IUP to the Commission each year for final agency action at a public hearing, and shall also provide for public notice and an opportunity to comment to comply with the SDWA.

The IUP shall include:

- (1) The Project Eligibility List and Priority / Fundable List of projects.
- (2) Descriptions of:
 - (a) Criteria and method used for distribution of funds
 - (b) Financial status of the DWRF program
 - (c) Short and long term goals of the DWRF program
 - (d) Amounts transferred between the DWRF and the Water Pollution Control Revolving Fund
 - (e) Set-aside activities and the percentage of the capitalization grant to be used

- (f) How a state disadvantaged community program will be defined and utilized, if applicable;
 and
- (3) Any other material that may be required by the SDWA.

52.5 PROJECT ELIGIBILITY LIST AND PRIORITY / FUNDABLE LIST PROCEDURES

- (1) The Project Eligibility List is the comprehensive list of projects showing current and future needs of PWS improvements. Each year the Division shall (after consultation with the DLG and the Authority) review, update, and compile additions and modifications to the Project Eligibility List and recommend such additions and modifications to the Commission for final agency action at a public hearing. The list shall be forwarded to the General Assembly each year on or before January 15; once approved by the General Assembly, the Authority is able to provide assistance to the governmental agencies with projects on the Project Eligibility List.
- (2) As required by federal regulations, all projects, except projects funded on an emergency basis, shall be prioritized before receiving assistance from the DWRF. The Priority / Fundable List includes projects from the Project Eligibility List that are ready for funding and have been prioritized by the Division based on information provided by the PWS. The Priority / Fundable List shall include:
 - (a) The name of the public water system;
 - (b) Priority points and rank assigned to the project;
 - (c) A description of the project;
 - (d) The expected terms of the financial assistance; and
 - (e) Population of the PWSs service area
- (3) Projects on the Priority / Fundable List will be financed in priority order; however, exceptions for funding out of priority order shall be allowed due to one or more of the following reasons:
 - (a) Certain governmental agencies are not ready to proceed with the project;
 - (b) Certain governmental agencies do not wish to participate in the DWRF, or they have received funding from other sources;
 - (c) Certain governmental agencies (on the list) had an emergency situation occur during the funding year; or
 - (d) Certain governmental agencies are not approved for funding because of technical, financial, or managerial deficiencies. (The Division will attempt to work with the governmental entity to resolve the issue through the capacity development program.)

52.6 PRIORITY SYSTEM

- (1) All PWSs with identified water quality problems related to health and compliance issues may be included in one of the categories listed below.
- (2) All PWS projects that fall into one of the categories listed below and have a pre-planning, planning, or pre-design document that describes a project to correct the water quality problem, shall be prioritized as ready for funding on the Priority / Fundable List.

(3) Funding for the projects under each category shall result in the PWSs complying with existing regulatory requirements.

(4) Eligible Project Criteria

Categories were developed to emphasize the most immediate public health and compliance issues. Projects on the Project Eligibility List will be classified by category 1, 2, 3, 4, 5 or 6 below, with "1" being the highest priority. Once a planning document is received, projects within each category will be further prioritized by the assignment of points from the priority point listings under each category. No consideration will be given to governmental agencies that have violations caused by poor operation and maintenance procedures or are under an administrative order for violating reporting requirements.

All loan projects shall submit applications by deadlines established in the annual IUP. If it is determined that the DWRF lacks sufficient funds to cover loans for all eligible projects that are ready to proceed within the funding year, Category 1 projects will be funded prior to Category 2 projects, which will be funded prior to Category 3 projects, which will be funded prior to Category 4 projects, which will be funded prior to Category 5 projects, which will be funded prior to Category 6 projects - until all funds are obligated. Within each category, the following criteria will be used to further prioritize the projects:

(5) Categories By Priority Ranking

- (a) <u>1 Acute Health Hazard</u>. The Division has identified continuous violation of an acute maximum contaminant level (MCL) or a surface water treatment rule (SWTR) treatment technique requirement.
- (b) <u>2 Chronic (long term) Health Hazard</u>. The Division has identified a continuous violation of an MCL or an SWTR treatment technique requirement for a chronic contaminant.
- (c) <u>3 Potential Acute Health Hazard</u>. The PWS has periodically exceeded an acute MCL, has levels greater than 50 percent of an acute MCL on a regular basis, or has short term problems meeting an SWTR treatment technique requirement that can be controlled temporarily by operational means.
- (d) <u>4 Potential Chronic Health Hazard</u>. The PWS has periodically exceeded a chronic MCL, has levels greater than 50 percent of a chronic MCL on a regular basis, or has short term problems meeting other treatment technique requirements.
- (e) <u>5 Other Future Needs</u>. The PWS is beyond the useful/design life and is in need of equipment replacement, rehabilitation or repair, in order to maintain compliance or further the public health protection goals of the SDWA.
- (f) <u>6 Economic Stimulus</u>. Projects that seek funding only under the American Recovery and Reinvestment Act of 2009 and that were not already on the Project Eligibility List as of January 1, 2009. Categories 1-5 will be given consideration prior to funding of Category 6 projects.
- (6) Priority Point Assignments Within Each Category

Once a pre-planning, planning, or pre-design document is received, projects within each category will be prioritized by the assignment of points from the following:

(a) <u>Population</u>. Points shall be assigned to PWSs based on the following schedule of population served by the project, with emphasis given to small communities:

25 to 1,000 20 points 1,001 to 3,300 15 points 3,301 to 10,000 10 points Over 10,000 5 points

- (b) <u>Financial Need.</u> Points shall be assigned to PWSs in accordance with the following "financial need criteria:"
 - (i) Ability to pay (annual water service fee as a % of median household income):

over 3%20 pointsover 2%; up to 3%15 pointsover 1%; up to 2%10 points

(ii) Local burden (total project cost per equivalent residential tap):

 Over \$5,000
 20 points

 Over \$3,500
 15 points

 Over \$2,000
 10 points

- (c) <u>Consolidation</u>. Fifteen points shall be assigned to a PWS if the project includes consolidating two or more PWSs.
- (d) <u>Water Conservation</u>. Five points shall be assigned to a PWS if the PWS implements a water conservation measure.
- (e) <u>Source Water Protection</u>. Two points shall be assigned to a PWS if the governmental agency implements source water protection measures.
- (f) <u>Beneficial Use of Sludge</u>. Two points shall be assigned to a PWS if the governmental agency intends to utilize water treatment plant sludge for a beneficial use as defined herein.
- (g) <u>Health Risk</u>. To further clarify the ranking of PWS projects, the Division shall assign up to twenty points for a PWSs health risks. Determination of the health risk will be made based upon the type and level of contaminant present within categories.

52.7 DISADVANTAGED COMMUNITIES PROCEDURES

Under the SDWA, states are authorized to establish Disadvantaged Communities Programs. The following procedures describe the approval and amendment process for Colorado's annual IUP as it relates to the administration of its Disadvantaged Communities Program. The Division, Authority and the DLG may recommend Program changes based on actual program implementation and the results of periodic reviews conducted hereunder. Approval of any and all changes in the IUP is subject to final agency action by the Commission.

(1) The DWRF may provide additional loan subsidies for governmental entities that are determined to be "disadvantaged." The definition/criteria of a disadvantaged community and the nature of the loan subsidies to be made available thereto shall be recommended for inclusion in the IUP by the Division and the Authority in consultation with the DLG. Subsidies, such as extended loan repayment terms and reduced interest rates at or above zero percent, are not subject to the thirty percent cap of the federal capitalization grant.

- While compiling projects on the Priority / Fundable List (utilizing the procedures listed in Section 52.5 above), the Division will identify the community projects that qualify for assistance under the Disadvantaged Communities Program in accordance with program definition/criteria.
- (3) The Division, the Authority and the DLG will conduct periodic reviews, as appropriate, of the Disadvantaged Communities Program. The reviews may result in recommended program changes relative to the nature of available subsidies to be incorporated into the IUP. In conducting such reviews and preparing recommendations, the following factors may be examined:
 - (a) The overall financial condition of the communities participating in the program, including but not limited to:
 - (i) The total drinking water utility system fee and tax burden upon rate payers;
 - (ii) Post project drinking water utility charges;
 - (iii) Drinking water utility indebtedness;
 - (iv) Median household income.
 - (b) The impact of the subsidy upon the continued financial viability of the DWRF.
 - (c) The merit of utilizing all financial assistance options allowed under the SDWA to ensure a safe drinking water supply for all citizens.
- (4) Upon receipt of comment from the Division, Authority and/or DLG, the Commission shall render final agency action upon the Disadvantaged Communities Program provisions of the IUP.

52.8 EMERGENCY PROCEDURES

- (1) The Commission may amend the project eligibility and Priority / Fundable Lists at any time throughout the year to include PWS projects that it determines and declares to be emergency projects needed to prevent or address threats to public health.
- (2) In cases where the Commission determines the amendments will result in substantial changes to the project eligibility or Priority / Fundable Lists, public notice and opportunity for comment on the proposed inclusions shall be provided.

52.9-52.10 RESERVED

52.11 <u>STATEMENT OF BASIS, SPECIFIC STATURTORY AUTHORITY AND PURPOSE (JULY 14, 2008 RULEMAKING; EFFECTIVE DATE JANUARY 1, 2009)</u>

Sections 37-95-103 and 37-95-107.8, C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

Sections 37-95-103 and 37-95-107.8 C.R.S.of the Colorado Revised Statutes moved the authority for promulgating rules and approving the annual Drinking Water Revolving Loan Fund Intended Use Plan from the Colorado Board of Health to the Water Quality Control Commission (WQCC). Updates to these rules reflect this change in authority.

52.12 FINDINGS IN SUPPORT OF EMERGENCY REVISIONS TO REGULATION #52, DRINKING WATER REVOLVING FUND RULES [5 CCR 1002-52] (MARCH 9, 2009)

The Commission conducted this rulemaking hearing to add a sixth category of projects for inclusion on the Drinking Water Revolving Fund Project Eligibility List. The addition of this category will ensure that Colorado will be able to use all funds that may become available under the American Recovery and Reinvestment Act of 2009 (ARRA). Projects added to the existing 2009 Project Eligibility list will receive funding only if necessary to fully utilize existing loan capacity and new federal funding that may become available in 2009. Consistent with the existing structure for prioritization, Category 6 projects will only be considered for funding after all other projects designated under Categories 1-5 have been given an opportunity to proceed. Category 6 projects will be subject to the eligibility requirements and intracategory ranking system outlined in Section 52.6 of this regulation.

The Commission intends that terms and conditions specific to the administration of grant monies received under the ARRA will be memorialized in an addendum to the 2009 Drinking Water Revolving Fund and State Drinking Water Grant Fund Intended Use Plan (IUP). Such terms and conditions may include additional criteria for funding eligibility and priority ranking to comply with the requirements of the ARRA and to maintain consistency with EPA's final ARRA guidance document. Interim deadlines or milestones to ensure that projects are proceeding expeditiously to meet the 12-month deadline in the ARRA may also be included in the IUP Addendum. To the extent that any of the terms and conditions in the IUP Addendum may differ from the original 2009 IUP or these Regulations, the Commission intends that the provisions of the IUP Addendum will govern with respect to the details of administering ARRA funds among the six funding categories. The Commission will utilize its administrative action hearing process, including opportunity for public review and comment, for approval of any IUP Addendum(s) as developed by the Water Quality Control Division, the Division of Local Affairs, and the Colorado Water Resources and Power Development Authority, consistent with Section 300j-12(b)of the federal Safe Drinking Water Act.

The Commission adopted these revisions on an emergency basis, with the intent that such revisions become effective immediately. The Commission found that immediate adoption of these revisions to Regulation #52 is imperatively necessary to preserve public health and welfare and that compliance with the requirements of section 24-4103, C.R.S., would be contrary to the public interest.

The Commission found that immediate effectiveness of these regulatory revisions was necessary to ensure timely addition of new projects to the Project Eligibility list contained within the 2009 IUP. To that end, the Commission conducted an administrative action hearing immediately after the Regulation #52 rulemaking hearing for the purpose of considering appropriate additions to the IUP (in the form of an addendum) and addition of specific projects to the Project Eligibility List contained in the IUP. The Commission determined that the projects added to the Project Eligibility List are emergency projects needed to prevent or address threats to public health or the environment. The Commission intends that the revised Project Eligibility List be submitted to the General Assembly for action by the April 1, 2009 statutory approval deadline.

52.13 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE (MARCH 9, 2009 RULEMAKING; EFFECTIVE DATE APRIL 30, 2009)

Sections 25-8-202(1)(g) and (o); and Section 37-95-107.8(4), C.R.S. provide the specific statutory authority for adoption of the attached regulatory amendments. The Commission also adopted, in compliance with section 24-4-103(4) C.R.S. the following statement of basis and purpose.

BASIS AND PURPOSE

The Commission conducted this rulemaking hearing to add a sixth category of projects for inclusion on the Drinking Water Revolving Fund Project Eligibility List. The addition of this category will ensure that Colorado will be able to use all funds that may become available under the American Recovery and Reinvestment Act of 2009 (ARRA). Projects added to the existing 2009 Project Eligibility list will receive funding only if necessary to fully utilize existing loan capacity and new federal funding that may become available in 2009. Consistent with the existing structure for prioritization, Category 6 projects will only be considered for funding after all other projects designated under Categories 1-5 have been given an

opportunity to proceed. Category 6 projects will be subject to the eligibility requirements and intracategory ranking system outlined in Section 52.6 of this regulation.

The Commission intends that terms and conditions specific to the administration of grant monies received under the ARRA will be memorialized in an addendum to the 2009 Drinking Water Revolving Fund and State Drinking Water Grant Fund Intended Use Plan (IUP). Such terms and conditions may include additional criteria for funding eligibility and priority ranking to comply with the requirements of the ARRA and to maintain consistency with EPA's final ARRA guidance document. Interim deadlines or milestones to ensure that projects are proceeding expeditiously to meet the 12-month deadline in the ARRA may also be included in the IUP Addendum. To the extent that any of the terms and conditions in the IUP Addendum may differ from the original 2009 IUP or these Regulations, the Commission intends that the provisions of the IUP Addendum will govern with respect to the details of administering ARRA funds among the six funding categories. The Commission will utilize its administrative action hearing process, including opportunity for public review and comment, for approval of any IUP Addendum(s) as developed by the Water Quality Control Division, the Division of Local Affairs, and the Colorado Water Resources and Power Development Authority, consistent with Section 300j-12(b) of the federal Safe Drinking Water Act.

The Commission adopted these revisions on both an emergency and permanent basis, with the intent that the permanent amendments become effective April 30, 2009.

PARTIES TO THE RULEMAKING

- 1. Denver Water
- 2. City of Aurora
- Colorado Contractors Association
- 4. Northwest Colorado Council of Governments